

REMARKS

In the Official Action mailed on **3 January 2007**, the Examiner reviewed claims 1-16. Claims 1-16 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Claims 1-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Beck et al (USPub 2002/0049963, hereinafter “Beck”), in view of Almy et al (USPN 6,609,216, hereinafter “Almy”).

Rejections under 35 U.S.C. §112

Claims 1-16 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. More specifically, independent claims 1 and 9 were rejected by the Examiner because the element of “allowing a user to select at runtime the instrumented portions of the code to execute” fails to comply with the written description requirement.

Applicant has removed the element of “allowing a user to select at runtime the instrumented portions of the code to execute” from independent claims 1 and 9.

Rejections under 35 U.S.C. §103(a)

Independent claims 1 and 9 were rejected as being unpatentable over Beck in view of Almy. Furthermore, dependent claims 3 and 11, which depend upon independent claims 1 and 9, respectively, were rejected as being unpatentable over Beck in view of Almy.

Examiner states that Almy discloses the element of “the overhead time is determined by executing the profiling instrumentation code without executing any instrumented code.” Examiner references Almy, column 2, lines 23-49, and states where $n=0$, as support for this argument.

Applicant respectfully disagrees. Almy discloses executing a test program including n test points and executing the program repeatedly, each time removing one of n test points, calculating the difference in time caused by removing one of n test points, and attributing the difference in time to the test point removed. At no point does Almy disclose or suggest determining the overhead time by executing the profiling instrumentation code without executing any instrumented code. In fact, Almy teaches away from such a situation by specifically stating that “the test case program is run a preselected number of times for the initial test case sequence (test points **1 through n**),” and fails to disclose or suggest the case where $n=0$, or determining the overhead of the test program. (Almy, Column 2, lines 23-30)

Accordingly, Applicant has amended independent claims 1 and 9 to include the subject matter of dependent claims 3 and 11, respectively. Applicant has cancelled dependent claims 3 and 11 without prejudice.

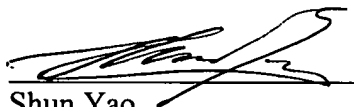
Hence, Applicant respectfully submits that independent claims 1 and 9 as presently amended are in condition for allowance. Applicant also submits that claims 2 and 4-8, which depend upon claim 1, and claims 10 and 12-16, which depend upon claim 9, are for the same reasons in condition for allowance and for reasons of the unique combinations recited in such claims.

CONCLUSION

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

By



Shun Yao
Registration No. 59,242

Date: 26 February 2007

Shun Yao
PARK, VAUGHAN & FLEMING LLP
2820 Fifth Street
Davis, CA 95618-7759
Tel: (530) 759-1667
Fax: (530) 759-1665
Email: shun@parklegal.com